



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 536668 B.C. LTD. C/O HUNTER MCLEOD REALTY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC CNE OPC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;

Service:

The Notice to End Tenancy is dated November 19, 2014 to be effective December 31, 2014 but the tenant states he did not receive it until December 2, 2014 and requests more time to make this application. The tracking information shows the Notice was available for pickup on November 21, 2014 but the tenant said he only got one Notice and then picked it up. The tracking information notes the first notice was left on November 24, 2014 and the final notice left on November 28, 2014. The tenant filed his Application for Dispute Resolution on December 9, 2014 and served it on the landlord by registered mail. The landlord agreed they received it but not within three days of filing and contends the tenant is out of time to dispute the Notice to End Tenancy. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced on November 1, 2013, it is now a month to month tenancy, rent is \$1070 a month and a security deposit of \$525 was paid. The tenant is an artist and does creative painting. In evidence, he provided some photographs of his work and of the building areas, a CD, a letter from his Doctor and friend and a statement disputing the allegations of the landlord.

The landlord served a Notice to End Tenancy for the following reason:

- a) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord provided statements from the building manager and many emails of complaints from the tenant below. This is a work-live building and the tenant below has offices where they meet clients and have expensive furniture. The landlord provided a list of problems that have significantly disturbed the other tenants and some of which have been expensive to the landlord. There have been complaints of noise and chemical smells but the landlord said the main problem which caused the Notice to End Tenancy to be issued were a series of water incidents. In November 2013, there was a leak to the unit below which was caused by the tenant showering without a shower curtain. The tenant agreed but said there was just some overspray and he had the shower nozzle pointed at the wall so thought it was fine. In December, there was a very large amount of water leaking into the unit below onto their expensive boardroom table; this was caused by the hose from this tenant's washing machine coming out of his bathtub and dumping onto the floor. The tenant agreed but said he told the manager he would clamp and secure the hoses tightly, not remove the washing machine and use the building's laundry machines as the manager alleges. In June 2014, there was another large flood as the tenant fell asleep while leaving the tap running in the kitchen. The tenant said there was just a small line of water from the tap, he fell asleep and was shocked when he saw the flood but he thinks it should not have leaked through if the floors were sealed properly. The landlord said the floors are concrete and the small cuts to which the tenant refers are just the normal expansion joints. The tenant downstairs was able to put up plastic to shield their furniture.

In October there was another leak and the landlord replaced some plumbing lines as they could not immediately identify the cause. In November 2014, there was another flood caused by the tenant's friend doing laundry and the hoses coming out of the tub again; the tenant said the friend did not check that the hoses were secure and some clamps may have loosened. At this time, carpets had to be cleaned and dehumidifiers rented for the unit downstairs and their expensive boardroom table is showing water damage. The landlord noted at this time that the washing machine had not been decommissioned so they demanded it be physically removed from the tenant's unit. The tenant contended that he used it as a laundry basket and was not using it but it was removed in December 2014 and stored in the basement. The landlord notes the water lines were still hooked up when he inspected when there was another smaller leak on December 9, 2014; at that time there were about 6 wet towels on the floor by the bath tub. The landlord suspects the washer continued to be used but in any case, the leaks

continued and have caused significant interference and unreasonable disturbance to the tenant below.

Included with the evidence are is a copy the Notice to End Tenancy, registered mail receipts and tracking information, many email complaints from the tenant below, a statement, CD and photographs from the tenant and a statement from the building manager.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that he or a person permitted on the property by him has significantly interfered with or unreasonably disturbed another occupant or the landlord. I find the landlord's evidence credible as it is well supported by the email complaints of the flooding from the tenant below and by this tenant's own oral testimony. Although the tenant alleged that some of this was caused by building defects, I find the landlord's evidence more credible that it was caused by the tenant or his guests as it is supported by the tenant below who has been there 3 years and said in an email that they had had no problems like this before November 2013 when this tenant moved in; also I find all of the flooding and leaking, except one incident, was directly linked to this tenant when the manager inspected his unit after a leaking incident.

In respect to the issue of time, I find the tenant was also out of time to dispute the Notice and requested more time to file the Application. However, I find this is moot as the landlord proved on the merits that there is good cause to end this tenancy. In respect to the tenant referring to employment with the landlord in his Application with the code CNE, I find the parties agreed this was just a technical mistake and the tenant was not employed by the landlord.

For all of the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy terminated on December 31, 2014. The landlord requested an Order of Possession effective January 31, 2015 if the tenant is not successful. I find pursuant to the provisions in section 55 of the Act, an Order of Possession is issued to the landlord as requested

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on December 31, 2014. Pursuant to section 55 of the Act, an Order of Possession is issued to the landlord effective January 31, 2015.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 13, 2015

Residential Tenancy Branch

